

Actions of the Citizen Trade Policy Commission of the Maine Legislature

2004:

- Commission established by the Jobs, Trade and Democracy Act (LD 1815)
- Commission first meets, October 2004

2005:

- Issued a statement urging Maine's Congressional Delegation to work against the passage of DR-CAFTA

- Recommended in writing that United States Trade Representative carve out government actions at the state and local level from the new GATS offer until the Commission had an opportunity to adequately review and analyze the language of the proposed commitment.

- Issued a number of press releases regarding its activities and held press conferences regarding its position on CAFTA.

2006:

- Met with and worked directly with the Office of the United States Trade Representative's (USTR) to establish a direct and open dialogue to maximize the ability of the Commission to convey the concerns of Maine's citizens to USTR in a timely and effective manner.

- In conjunction with the Forum on Democracy and Trade developed and conducted the Commission's 2006 assessment.

- Provided USTR with policy recommendations during the most recent round of the World Trade Organization's (WTO) Working Party on Domestic Regulation (WPDR) negotiations on rules implementing a provision of the General Agreement on Trade and Services (GATS) dealing with the domestic regulation of services.

- Established a legislative outreach subcommittee to better inform Maine's Legislature about trade related issues.

- Opposed the adoption of the proposed rules by the Department of Homeland Security pursuant to the Intelligence Reform and Terrorism Prevention Act that would require U.S. citizens and nonimmigrant aliens to present a passport or alternative form of documentation approved by the department in order to enter the United States from Canada.

- Supported the National Legislative Association on Prescription Drugs Prices' nomination of Sharon Treat to two USTR advisory committees.

- Began exploring possible funding sources to support an executive director position within the Commission.

2007:

- Developed a resolution that passed unanimously in both chambers of the State Legislature to request the U.S. Congress to replace the existing Trade Promotion Authority (Fast-Track) with a more inclusive and democratic system for negotiating trade agreements. Fast-Track expired without renewal on June 30, 2007, and has not yet been replaced.

2008:

- Notified Maine's Congressional Delegation and Governor Baldacci that it opposed the proposed U.S. -Colombian Free Trade Agreement based on public testimony received at the commission's February 21, 2008 public hearing and after determining that the agreement would be unfavorable to the people of Maine, the United States and Colombia.

- As a result of the People's Republic of China's challenge to Maryland's proposed legislation to regulate lead in consumer products, the commission posed the following questions USTR: 1) what agency/entity within the U.S. federal government is responsible for notifying WTO member nations of state legislation; 2) how often such notification occurs and 3) what mechanism or process is used to monitor state legislation. USTR responded that state legislatures remain fully empowered to take action to protect the public and that the WTO notification system normally requires USTR to provide notification on federal agency regulations but not federal or state legislative proposals.

- Advised USTR of its concerns about recent GATS negotiations and in particular, the draft language proposed by the chair of the WTO's Working Party on Domestic Regulations that appeared to shift the constitutionally-protected "rational basis test" for state regulation to a much more restrictive standard of "not more burdensome than necessary to ensure the quality of the service." The commission also expressed concern about draft language that could restrict a state's ability to adopt standards that may be different from those advanced at the federal level.

AN ACT TO REQUIRE LEGISLATIVE CONSULTATION AND APPROVAL PRIOR TO ENTERING INTO BINDING AGREEMENTS TO CONFORM STATE LAWS TO THE TERMS OF INTERNATIONAL COMMERCIAL TRADE AGREEMENTS

It is the policy of the State of Maine that the State may not be bound by any trade agreement without the consent of the Legislature. Consent to a trade policy subject to this Act must be expressed in an affirmative vote of the Legislature pursuant to a resolution or resolve. The following actions are required before the State of Maine may consent to the terms of a trade agreement:

- (1) When a request for binding agreement by the State of Maine is received from the United States Trade Representative (USTR) regarding procurement, services, investment or any other trade agreement rules that impact state laws or authority, the Governor shall submit to the Legislature a copy of the final legal text of the agreement for review and consideration before committing the State to adhere to its provisions.
- (2) The proposed trade agreement must be referred by the Legislature to the Citizen Trade Policy Commission for review. The Commission is authorized to hold public hearings on the matter, and must review the agreement and make a recommendation to the Legislature and the Governor as to whether entering into the proposed binding trade agreement furthers the public interest of the State and its citizens.
- (3) The proposed trade agreement may in addition be referred to one or more Joint Standing Committees of the Legislature having jurisdiction over the subject matter of the proposed agreement, and any findings and recommendations of the joint committees must be forwarded to the Commission for review and inclusion in its report to the Legislature and Governor.
- (4) The Commission's report must include the following information and findings:
 - A. An analysis of how specific provisions of the agreement will change or affect existing state law;
 - B. A statement of any administrative action proposed to implement these trade agreement provisions in the State; and
 - C. A finding whether the trade agreement will benefit the public interest and why.
- (5) If the Commission finds that the trade agreement will benefit the public interest, it is authorized to report out a bill authorizing the state to sign on to the specific listed provisions of the agreement in question.
- (6) The bill authorizing the State to sign on to specific listed provisions of a trade agreement must be referred to committee and considered by the legislature pursuant to the rules of the Legislature applicable to any bill, and must be enacted into law in order for the State to be bound by the provisions of the trade agreement in question.

Summary: This Act requires the consent of the Legislature prior to the Governor entering into a binding agreement to conform state laws to the terms of international commercial agreements.

GROUND WATER BILL REQUESTS

R	LD	Sponsor1	BroadSubj/ MajorSubject	MinorSubject	Title
	189	645 SARTY	NAT	EXPORTATION	An Act To Provide for Municipal Oversight and Authority over Groundwater Extraction
	237	663 SCHATZ	NAT	CONSERVATION	An Act To Clarify A Municipality's Authority To Pass Ordinances That Govern the Extraction of Groundwater
	1247	0 ADAMS	NAT	CONSERVATION	An Act To Protect Maine's Groundwater
	1285	0 HILL	NAT	WELLS	An Act To Clarify the Laws Regarding Significant Groundwater Wells
	729	0 CASAVANT	NAT	EXPORTATION	An Act To Exclude Water from Absolute Dominion Laws
	1028	0 CAMPBELL	NAT	EXPORTATION	An Act To Protect Groundwater
	1395	0 SCHATZ	NAT	EXPORTATION	An Act To Limit the Transport of Water for Export
	1455	0 BOWMAN	NAT	CONSERVATION	An Act To Secure and Protect Maine's Groundwater
	1819	0 WEBSTER	NAT	CONSERVATION	Resolve, To Establish the Blue Ribbon Commission To Examine the Legal and Policy Implications of Groundwater Extraction

Forum

on democracy & trade

Statement to Presidential Transition Team on Trade Policy
January 15, 2009

Balancing the values of free trade and federalism: First, deal with immediate problems; next, provide the analytic capacity and a process for state-federal consultation.

In the first days of the Obama Administration, several trade and federalism issues will require immediate attention, including an official reinterpretation of NAFTA chapter 11 and holding firm in opposition to proposals arising from the WTO Working Party on Domestic Regulation that would further impinge on state government authority to regulate service industries.

In the longer term, however, the goal of expanding free and fair trade depends on consultation and cooperation between the federal government and the states on export promotion initiatives and economic development programs. Intergovernmental cooperation is critical for building a positive net balance in exports. Regarding trade policy, the consultation agenda should also include attention to the full range of investment agreements, commitments in service sectors, and reform of rules on procurement, subsidies and international standards for goods.

Consultation: First, collect the data and develop analytic capacity to make state-federal consultation meaningful; next, enact a totally new model of trade promotion authority legislation that brings states to the table; and then, redesign trade development assistance strategies through innovative partnerships with states in order to advance the global competitiveness of firms, workers, and communities.

The first step in improving intergovernmental initiatives on trade and jobs will require analytic capacity building and improved formal mechanisms for state/federal consultation on trade policy. Neither the states nor the federal government currently have sufficient analytic resources to conduct in-depth consultations related to trade negotiations.

Neither federal nor state government has the legal capacity to produce a complete inventory of state laws, regulations, or policies that may be in violation of proposed or negotiated agreements. As an example, in 2005, state trade directors were given less than two weeks to respond to the impact of numerous offers under the General Agreement on Trade in Services. The task was impossible. Several governors responded simply asking that their states be carved out of any new GATS commitments – which was not helpful to U.S. negotiators and U.S. exporters of services.

Likewise, no government has the economic capacity to project the economic and employment effects of proposed and negotiated agreements, particularly at the state and community level. Both the states and the federal government lack adequate state and community level data on exports and imports of goods and services, as well as data on inbound investment. Such data are needed to better target export promotion opportunities, to identify job loss risks that may arise from international trade and investment agreements, and to evaluate the effectiveness of various investment attraction and guest skilled-worker programs.

Developing this analytic capacity will require appropriation of funds for researchers at universities, at national associations of state officials, or at NGOs so as to produce unbiased legal and economic analysis on trade and federalism issues. It also will require improvements in collection and dissemination of trade and investment data collection and dissemination. Congress should mandate the U.S. Department of Commerce to collect export and import data for both goods and services at the community level.

The second step will require consultation with states about how to strengthen their role in a totally new model of federal trade promotion authority legislation.

The third step would involve federal-state collaboration on innovative trade development design and program implementation. By building on global and grassroots best practices, such collaboration would position small and mid-sized firms to succeed in global markets, thereby creating export value, employment opportunity, and globally engaged communities.

Investment: First, reinterpret NAFTA's investment chapter; later, enact more comprehensive reforms.

During the campaign, President Obama stated, "I will ensure that foreign investor rights are strictly limited and will fully exempt any law or regulation written to protect public safety or promote the public interest. And I will never agree to granting foreign investors any rights in the U.S. greater than those of Americans. Our judicial system is strong and gives everyone conducting business in the United States recourse in our courts."¹

The President was responding to the fact that NAFTA, other FTAs, and bilateral investment treaties (BITs) all create open-ended property rights that investors could use to challenge a wide range of regulations such as gambling limits, environmental regulations or climate policy.² Canada and Mexico have already lost investment disputes involving three important rules. Even if they cannot agree to renegotiate the whole agreement, the NAFTA nations could use interpretive notes, as specifically provided in chapter 11 of the existing agreement, to clarify problematic investment provisions. Specifically:

1. *Investor rights to compensation for "expropriation."* An interpretive note could codify a decision that the United States won, *Methanex v USA*, in which the panel interpreted investor rights narrowly so that expropriation rules do not allow "regulatory taking" claims to exceed the rights of U.S. investors.
2. *Investor rights to a "minimum standard of treatment" (MST).* An interpretive note could codify the interpretation by State Department lawyers in a pending dispute, *Glamis Gold v. USA*. The U.S. position taken in that case is that MST should be limited to "full protection and security" and denial of justice where domestic courts (not legislatures) treat foreign investors in a way that is "notoriously unjust."
3. *Investor rights that supersede multilateral environmental agreements (MEAs).* Canada lost a dispute involving its authority to limit cross-border transfer of hazardous waste under the Basel Convention. An interpretive note could codify the position argued by Canada, that investor rights do not trump MEAs.

Services: First, stop WTO efforts to expand GATS coverage of state measures; later, develop a new model for services agreement.

The General Agreement on Trade in Services (GATS) is the most complicated and far-reaching of all WTO agreements in terms of its impact on state regulatory authority – e.g., utilities, telecommunications, coastal and commercial development, professions, financial services, distribution services, health facilities, storage and transportation of fuels, and higher education, among others. The GATS is also a model for the most far-reaching provisions in the FTA chapters on services. These are among the most troubling trade rules on services:

1. *WTO negotiations on 'domestic regulation.'* In January of 2008, the chairman of the WTO's Working Party on Domestic Regulation (WPDR) released a fourth draft of 48 proposed "disciplines." A Services Working Group convened by the InterGovernmental Policy Advisory Committee (IGPAC) has highlighted several of these disciplines as posing a significant risk of conflict with state regulations that neither discriminate nor limit market access.³ For example, the IGPAC group expressed ...
 - a. "Serious concern [about disciplines that require domestic regulations to be] 'pre-established, based on objective criteria and relevant...' given the potential for unacceptable constraints on the scope and exercise of state/local regulatory authority, particularly related to complex and emerging industries." IGPAC is referring to the fact that a term like "objective" has been interpreted by the WTO in ways that are inconsistent with regulatory practice in the United States.
 - b. "Active opposition to the extremely objectionable omission of any mention of sub-federal policy objectives from [the section that states a principle of deference to legitimate national policy objectives]." The services working group recommends instead the following clarifying language: "*National policy objectives include objectives identified at national or sub-national levels.*"
2. *Proposed new sector commitments.* In the 2005 round of GATS negotiations, U.S. negotiators proposed a number of "commitments" in sectors that are likely to create conflicts between GATS rules and state-level regulation or delivery of services. Some of these commitments are part of the proposed settlement of the WTO-GATS dispute with Antigua and Barbuda over internet gambling. When USTR sought comments from state governments back in 2005, several of these sectors were not even mentioned in its communications to states. For those sectors that were mentioned, the comments submitted from important networks such as the American Council on Education were ignored. Among the sectors of concern to states (and why):
 - a. *Higher education* – a GATS commitment could provide competitive advantages to service suppliers that do not have to meet stringent accreditation standards.
 - b. *Research and development* – states have created substantial tax preferences to promote in-state investments in areas like stem-cell research and advanced biofuels.
 - c. *Bulk storage of fuels* – state and federal regulation of coastal facilities like refineries and LNG terminals could be challenged under proposed GATS disciplines.
 - d. *Electricity brokering* – state and federal regulators are still coping with the effects of market manipulation by Enron and other energy traders.

Procurement and subsidies: First, recognize a national economic emergency defense; then, develop new models for international procurement and subsidies agreements.

The first step in reforming procurement and subsidies agreements will be to recognize that a national economic emergency is a defense against claims of violations resulting from state and federal programs to create jobs and businesses, ensure energy independence, establish an effective climate policy, and recapitalize financial institutions and manufacturing firms.

OR:

The first step in reforming procurement and subsidies agreements will be to secure recognition under the WTO and in other trade agreements that in times of national economic emergency, countries can take appropriate steps to create jobs and businesses, ensure energy independence, establish an effective climate policy, and recapitalize financial institutions and manufacturing firms, with the expectation that legitimate emergency measures will not be challenged by trading partners.

Further, in the past few years, the United States has advanced proposed subsidy rules that conflict with state economic development practices. If they had been adopted, the U.S. proposals would have compromised much of the federal rescue package being developed for banks, the auto industry and other sectors of the economy.

The second step will be to initiate consultations on new models for procurement, subsidies, and similar international trade agreements that would encourage, not discourage, effective state and federal economic development and job creation strategies. As reflected in the Bipartisan Trade Deal of 2007, these strategies should include deference to core labor standards of the International Labor Organization and the objectives and procedures of multilateral environment agreements.

¹ Pennsylvania Fair Trade Coalition, 2008 Presidential Candidate Questionnaire, answer of Sen. Barak Obama, questions 10, available at http://www.citizenstrade.org/pdf/QuestionnairePennsylvaniaFairTradeCoalition040108FINAL_SenatorObamaResponse.pdf (viewed August 24, 2008); see also Barak Obama for President, *A Blueprint for Change*, Strengthening the economy: Trade, 13, available at <http://www.barackobama.com/issues/> (viewed August 24, 2008).

² Kate Miles, an Australian scholar, warns that as currently interpreted, the minimum standard of treatment "will almost certainly prove an impediment to the immediate implementation of domestic climate change mitigation measures and regulations to give effect to the CDM and emissions trading mechanisms of the Kyoto Protocol."

³ Memo from Kay Wilkie, chair of the Intergovernmental Policy Advisory Committee, Services Working Group, to Daniel Watson, Office of the U.S. Trade Representative (February 12, 2008).



Congress of the United States
House of Representatives
Washington, DC 20515

February 26, 2009

The Honorable Barack Obama
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Re: Working Together to Deliver Your Trade Reform Agenda to the American People

Dear President Obama:

Your election and inauguration has inspired Americans of every region, race, and creed to hope for a better future for their families and our nation. We look forward to working with you to deliver on the promise of change realized in the recent election.

Among the great challenges our nation faces is creating new trade and globalization policies that serve America's workers, consumers, farmers, and firms. We believe that a unique opportunity exists for the legislative and executive branches to work in partnership to reform U.S. trade policies; to ensure that Americans enjoy the benefits of expanded trade; and to remedy the negative consequences on the American economy, environment, and public health and safety that have resulted from aspects of the current trade and globalization model.

We heartily agree with your conclusion that trade policies "are not sustainable if they favor the few rather than the many." Rebalancing our trade and globalization policies so that they create and retain good jobs in the United States, foster sustainable and equitable development worldwide, and provide government with the policy space necessary to solve pressing economic, climate, and other challenges is critical to prosperity and security at home and around the world.

The dramatic economic downturn -- caused in part by the lack of prudent global regulation of commerce and massive trade and financial imbalances -- has fueled the relentless demand from the American public for trade reform. Across the country, successful candidates in 2008 ran against the failed trade policy status quo and pledged a new approach. In the 2006 and 2008 elections, Americans elected a total of 72 new fair-trade reformers to the House and Senate to replace supporters of the North American Free Trade Agreement (NAFTA), the Central America Free Trade Agreement (CAFTA), the

World Trade Organization (WTO), and our current China trade policies. The unprecedented U.S. election focus on trade and globalization reform reflects the public opinion that America's trade and globalization model needs a major overhaul.

It will be challenging to remedy the considerable damage that our past trade and globalization policies have wrought. However, we are confident that, working together, we can replace the failed policies of the past with those that deliver broadly shared benefits. We look forward to working with you to seize this exciting opportunity to create a more just American trade policy, in the areas outlined below and beyond.

Remedying the Failed U.S. - China Trade Relationship: We are eager to work with you to resolve the pervasive China currency manipulation problem. Our immense trade imbalance with China is gutting the U.S. manufacturing base and has serious economic and security implications. We urge you to remedy a broken U.S.-China trade relationship by engaging the Chinese government at the highest level, utilizing firm targets and deadlines. Further, we urge you to halt negotiations recently launched by former President Bush to establish a new U.S.-China Bilateral Investment Treaty (BIT). While many in Congress have echoed your call for an end to existing loopholes that promote offshoring, BITs provide new protections to assist U.S. firms' relocation of investment and jobs offshore. A China BIT would also empower Chinese firms, including state-owned firms, to purchase even more U.S. assets under preferential terms. Moreover, a BIT based on the existing U.S. model would allow these Chinese firms to skirt U.S. courts and use foreign tribunals to challenge U.S. regulation of Chinese firms operating here, extending the investor-state system you so rightly criticized during the campaign, and which we address in more detail below.

Improving Import Safety: We are also eager to work with you to deliver on your campaign pledge to create new import-safety policies to ensure that food and goods coming from China and all countries meet U.S. safety and inspection requirements as a condition of entering our market and homes. Ensuring that Americans are not exposed to serious and unnecessary risks from imported goods will require improvements to our existing trade agreements, which limit the safety standards and inspection rates applied to imports, and to our domestic imported product and food safety regimes and their funding.

Renegotiating NAFTA and CAFTA: During the campaign, you described needed changes to NAFTA and the NAFTA-model FTAs, such as CAFTA. We pledge our support for an inclusive process to review and renegotiate these pacts. The issues that you raised regarding the NAFTA model are those that have been the basis of congressional opposition to NAFTA-style pacts: excessive foreign-investor privileges and private enforcement systems; limits on domestic procurement policy and food-safety protections; and more. Your call to renegotiate NAFTA, CAFTA, and other pacts, combined with the longstanding interest by many in Congress to improve the U.S. trade-agreement model, provide a long-overdue opportunity for a much-needed debate about U.S. trade pacts, and what policies they must and must not include. We are eager to work with you to build consensus around a new model before considering future agreements. To this end, we ask you to reverse the Bush administration's unilateral September 2008 declaration that the

United States will join in negotiations for a Trans-Pacific Strategic Economic Partnership (with Australia, Brunei, Chile, New Zealand, Singapore and Vietnam.)

The Bush Administration Free Trade Agreements (FTAs): We oppose the FTAs with Colombia, Panama, and Korea, which represent the "more-of-the-same" trade-agreement model promoted by the previous administration.

Colombia FTA. We would oppose any trade agreement with Colombia until we have witnessed a sustained period during which the current extreme human-rights violations against unionists, Afro-Colombians, and indigenous people have ceased. More than 460 unionists have been murdered in Colombia since President Álvaro Uribe took office in August 2002, including 49 in 2008 alone. This is a twenty-five percent increase from 2007, even as Colombia faced high levels of scrutiny related to the FTA. Additionally, there are growing revelations about the Uribe Administration's links to rightwing paramilitaries responsible for assassinations of unionists and other civilians. It is critical to send a signal to the world that the United States will not tolerate the assassination of people seeking to exercise their basic human rights.

Panama FTA. We also believe that Panama is not an appropriate U.S. FTA partner. A Government Accountability Office study identified Panama as one of only eight countries – and the only current or prospective FTA partner – that was listed on all of the major tax-haven watchdog lists. Panama has long been a key target of both the Organisation for Economic Co-operation and Development and other tax transparency entities for its resistance to international norms in combating tax evasion and money laundering. Indeed, Panama is one of few countries that has refused to sign any tax information exchange treaties. We applaud your cosponsorship last year of S. 681 (The Stop Tax Haven Abuse Act), which designates Panama as an "Offshore Secrecy Jurisdiction" targeted for that legislation's restrictions on the use of offshore tax havens and abusive tax shelters to avoid U.S. federal taxation. Panama is one of the top locations for multinational firms' subsidiaries – many created for the sole purpose of avoiding taxes.

Korea FTA: In addition to its lopsided auto provisions, the Korea FTA includes major financial service-sector deregulation and liberalization provisions that contradict global and domestic congressional efforts to re-regulate this volatile sector.

We are eager to work with you to build support for the new trade agreement model we create together and for pacts with countries that respect the rule of law and human rights and that provide economic opportunities for American workers, farmers, and firms. While the Bush FTAs with Colombia, Panama, and Korea contain some improvements regarding labor and environmental standards relative to NAFTA, more work is needed on these and other provisions. Many of the most serious problems with the previous trade-agreement model are replicated in these FTAs. They must be renegotiated to ensure that these pacts at a minimum pass the most conservative "do no further harm" test.

This includes the FTAs' investment chapters, which afford foreign investors with greater rights than those enjoyed by U.S. investors. These three pacts' foreign-investor chapters

contain the same provisions in CAFTA that led many Democrats to oppose that pact, and that you cited as problematic during your campaign. Such provisions promote offshoring and subject our domestic environmental, zoning, health, and other public-interest policies to challenge by foreign investors in foreign tribunals.

The Bush FTAs also still contain language that limits import inspection and requires the United States to accept imported food that does not meet our domestic safety standards. Further, the Bush FTAs contain procurement rules which forbid anti-off-shoring and many Buy America policies and subject to challenge many common federal and state procurement policies regarding renewable-energy, recycled-content, and other important standards. These terms must be changed to provide the policy space for many of your exciting "Green Economy" proposals, which we also support.

The Bush FTAs also contain the NAFTA-style agriculture trade rules which have simultaneously undermined U.S. producers' ability to earn a fair price for their crops at home and in the global marketplace. Multinational grain-trading and food-processing companies have made enormous profits, while farmers on both ends have been hurt. As you noted in the campaign, one result of NAFTA-style agricultural rules has been the displacement of millions of farmers in developing-country FTA partners, with corresponding increases in illegal immigration to the United States.

Finally, while the most egregious CAFTA-based terms limiting access to affordable medicines have been removed from the Bush FTAs, the texts still include NAFTA-style terms that undermine the right to affordable medicines that were contained in the WTO's 2001 Doha Declaration on Access to Medicines.

Transforming the WTO Doha Round Agenda: We are excited to work with you to create a new agenda for future global trade talks that address the existing problems in current WTO rules. Replacing the now-outdated and long-beleaguered "Doha Round" agenda provides a unique opportunity to reestablish the United States as a global advocate for economic fairness. In contrast, the Doha Round, if concluded, would expand the damage the WTO has already wrought both here and abroad. Since establishment of the WTO and NAFTA, the U.S. trade deficit jumped exponentially from under \$100 billion to over \$700 billion – over 5 percent of national income. At the same time, U.S. real median wage growth has flattened, despite impressive productivity gains. Meanwhile, the developing countries that have most faithfully adopted WTO rules have seen significant declines in their growth rates, and a global food crisis has caused growing hunger in many poor nations.

While your goal of adding labor rights to the WTO is not even on the Doha Round agenda, many troubling proposals are. Among the concessions demanded of the United States under the current talks are the unacceptable weakening of existing U.S. domestic trade laws, and the WTO-binding of increased numbers of guaranteed U.S. visas for foreign workers seeking employment here. Moreover, a key element of the Doha Round agenda is further service-sector deregulation and liberalization – including financial services and energy. Congress and the world at large are struggling to re-regulate

financial services and create new energy policies to ensure our shared future; it is extremely counterproductive to permit imposition of new WTO limits on the domestic policy space needed in these critical areas. Indeed, a new WTO negotiating agenda must focus on creating the flexibilities needed to address the critical issues of our time, including policies to counter global climate change.

We are all eager to work with you to create American trade and globalization policies that promote our shared goals of economic justice, poverty alleviation, healthy communities, human rights, and a sound environment. Correcting our past trade and globalization policy mistakes and moving forward on a new path can help our nation face our considerable economic challenges. We look forward to working with you to create new American trade policies that enjoy broad support.

Sincerely,

Michael H. Michaud
Rosa L. Delauro

Bob Filner

John Rahall

Walter B. Jones

Marjorie Kaptur

Paty Heflin

Linda J. Sanchez

Cedric C. Brown

Louise M. Slaughter

Max Baucus

Mike Mansueti

Samuel Rader

Jim Oberstar

Peter J. Vucelja

John F. Tierney

Frank Pallone, Jr.

Betty Sutton

Barack Spack

Jim McLean

Phil Han

Donna F. Edwards

Donna F. Edwards

Mike McIntyre

Michael G. Ann

Paul D. Toole

Chris

Kath Elin

Steve Kagen, M.D.

Mary Jo Filmy

Ron M. Lijalva

David Lipish

Mazie K. Herono

Mark Schauer

Brian Higgins

Lang Kim

Barbara Lee

Ken Munn

Dennis J. Kuenrich

Don E. Cullen

John D. Stroh

Bruce L. Bailey

Jack Johnson

Steve Larkach

Carol Shea-Porter

Tim Ryan

James Childers

John A. Brown

Eric Zane

Dan Maffei

Gary Peters

Arthur J. Hyde

John P. Sarbanes

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Representative Rosa L. DeLauro
Representative Bob Filner
Representative Nick J. Rahall III
Representative Walter B. Jones
Representative Janice D. Schakowsky
Representative Marcy Kaptur
Representative Peter A. DeFazio
Representative Linda Sánchez
Representative Collin C. Peterson
Representative James P. McGovern
Representative Phil Hare
Representative Donna F. Edwards
Representative Jesse Jackson Jr.
Representative Mike McIntyre
Representative Michael A. Arcuri
Representative Paul Tonko
Representative Chellie Pingree
Representative Keith Ellison
Representative Steve Kagen, M.D.
Representative Mary Jo Kilroy
Representative Raúl Grijalva
Representative Daniel Lipinski
Representative Mazie Hirono
Representative Mark H. Schauer
Representative Daniel B. Maffei
Representative Gary C. Peters

Representative Louise M. Slaughter
Representative Maurice D. Hinchey
Representative John Conyers Jr.
Representative Jerrold Nadler
Representative James L. Oberstar
Representative Peter J. Visclosky
Representative John F. Tierney
Representative Frank Pallone Jr.
Representative Betty Sutton
Representative Bart Stupak
Representative Brian Higgins
Representative Larry Kissell
Representative Barbara Lee
Representative Gene Green
Representative Dennis J. Kucinich
Representative Dale E. Kildee
Representative Heath Shuler
Representative Bruce L. Braley
Representative Henry C. Johnson Jr.
Representative David Loebsack
Representative Carol Shea-Porter
Representative Tim Ryan
Representative Travis W. Childers
Representative John A. Boccieri
Representative Eric J. J. Massa
Representative Stephen F. Lynch
Representative John P. Sarbanes

Ron Kirk
c/o Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Mr. Kirk:

Congratulations on your appointment as the new United States Trade Representative. As chairs of the Maine Citizen Trade Policy Commission, we look forward to working with you. We believe in the power of trade as a tool for promoting economic growth and enhancing relationships between the United States and its trading partners.

The Citizen Trade Policy Commission was established by the Maine legislature in 2004 to monitor the impact of international trade policy on our state. We have members representing the House of Representatives, the State Senate, the Maine International Trade Center, various state agencies, and members affiliated with citizen constituencies including small businesses, manufacturers, labor, environmental organizations, and small farmers.

States and local governments are important partners with private business in the design and implementation of our nation's economic development strategies. States and cities have traditionally acted as the 'laboratories of democracy' where different economic policies can be pioneered. Because trade is a critical part of any successful economic development strategy, and because different states, cities and towns have needs related to trade and trade policy that are as different from one another as are the mix of products and services that we export, we seek to add our voices and expertise to this policy arena.

Since the conclusion of NAFTA and the WTO Uruguay Round, states have been allowed to play only a limited role in the policy-making process. USTR has expected our support in all matters pertaining to trade but too often has been unwilling to engage in dialogue with state actors on critical issues of trade and investment.

With your assistance, we intend to build a more collaborative relationship between the federal government and the states on trade. By working together, we can preserve our federal system and reach out for new trade relationships around the world.

In meetings convened with the support of national associations such as the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislatures, officials from the different branches of state governments have been meeting in order to articulate a set of approaches that could assist in the development of a better federal-state consultative process on trade.

To summarize our concerns:

We seek the establishment of a **Federal-State International Trade Policy Commission**, and/or the creation of a **Center on Trade & Federalism**, supported

by both the federal government and the states, with adequate personnel and resources to ensure that the major provisions of trade agreements and disputes that impact on states can be analyzed, and their findings communicated to and discussed with key state actors on trade.

We seek **changes in the structure and role of USTR trade advisory committees.**

All state and local government input has been corralled into a single committee, the InterGovernmental Advisory Committee (IGPAC); the membership of that committee was determined entirely by USTR, and not by the states them-selves; no analytic resources were provided to IGPAC; turn-around times for IGPAC members to comment on the results of negotiations were extremely brief, and no consultation occurred at a stage in the process where state concerns could influence the course of negotiations. IGPAC members had to go through a lengthy process of obtaining a 'security clearance'; and while we can understand the need for discretion in the disclosure of sensitive negotiating information, it simply makes no sense to put IGPAC members through this process when the end result is that they are subsequently unable to discuss the terms of on-going disputes and negotiations with their fellow state officials. Further, more than half of all states lack any representation on IGPAC.

We look forward to discussing with you opportunities for building a collaborative approach to trade that will strengthen the system of federalism that was part of the genius of our nation's founders, and that remains a critical aspect of our national economy's competitiveness in the years to come. With congratulations and very best wishes for success in your new role.

Yours sincerely,

**Statement of Maine Rep. Sharon Treat
Executive Director, National Legislative Association on Prescription Drug Prices
PIJIP Forum on Innovation and Access to Medicines
February 19, 2009**

MEDICAID IS AN ESSENTIAL STATE PROGRAM – STATES ARE THE HEALTH CARE SAFETY NET IN THIS COUNTRY

- Besides education, Medicaid is the single largest state government expenditure
- Medicaid is state-federal program, jointly administered and funded by the federal government and states
- It insures nearly 60 million low income and disabled people with a total state/federal cost of more than \$350 Billion in 2008
- In addition to administering Medicaid, states run a variety of other health programs with pharmaceutical components including immunizations, public health clinics for reproductive health and HIV treatment, and stand-alone prescription drug access programs for the elderly (which now wrap around Medicare Part D) and low income people who do not meet Medicaid eligibility requirements

MEDICAID IS A DRAMATICALLY MORE COST-EFFECTIVE PROGRAM THAN THE PRIVATELY ADMINISTERED MEDICARE PART D PHARMACY BENEFIT BECAUSE STATES NEGOTIATE PRICES USING A PREFERRED DRUG LIST (PDL)

- Prices paid for the drugs used by the dual eligible beneficiaries under Medicare Part D are significantly higher than the prices paid by Medicaid for the same drugs. The higher prices for the top 100 drugs produced a windfall of \$1.7 billion for drug manufacturers in 2006, the first year of Medicare Part D. The higher prices produced an even larger windfall of \$2 billion for the drug manufacturers in 2007 [July 2008 report by the House Committee on Oversight and Government Reform].

- The Australia and Korea FTAs, and this proposal, appear to be trying to achieve through international treaties – which states are pretty much excluded from influencing – what drug manufacturers have been unable to achieve through the courts: making sure states pay the highest possible prices for prescription drugs and slowing down the introduction of life-saving, cheaper generics
- Meanwhile state-collected data shows hundreds of millions of dollars spent even in small states on direct to consumer advertising and on marketing activities aimed at prescribers -- spending that does nothing to increase innovation and research aimed at solving the world's health crises or providing medications to the poor of the world at an affordable price.
- Quite the contrary, this money – MORE THAN WHAT IS SPENT ON R&D – is all about increasing the utilization of often non-essential drugs like Botox, Viagra, and other patent-protected drugs.

SO FROM A STATE PERSPECTIVE, IT IS HARD TO GET BEHIND A PLAN THAT APPEARS TO CRIPPLE OUR ABILITY TO PROVIDE ACCESS TO HEALTH CARE TO NEEDY PEOPLE IN RURAL MAINE, SUPPOSEDLY IN ORDER TO HELP OTHER NEEDY PEOPLE, WHILE BILLIONS ARE WASTED ON MARKETING PATENTED DRUGS.

- Its time to come up with a new model for funding innovation and R&D: we need to delink prices from R&D. We need to lower prices in the United States and other high income countries, not raise them.
- States are increasingly interested in participating in discussions about trade policy and getting engaged in international issues – witness the three state commissions on trade and sovereignty in the Northern New England states, among others.
- There are other models being proposed to spur innovation and improve access to medicines in the developing countries of the world as well as in the U.S. State legislators are willing to be part of the conversation about how to move forward with a new model that does not have the side effects of the current system.

August 13, 2008

The Honorable Max Baucus
Chairman
Finance Committee
United States Senate
Washington, DC 20510

Dear Senator Baucus:

Thank you again for the opportunity to testify at the July 15 Finance Committee Hearing on "International Enforcement of Intellectual Property Rights and American Competitiveness." At the hearing, you asked us to work together to find a "middle ground" on the issue of global access to medicines. Specifically, you asked whether we could find a way "to protect our patents abroad but also demonstrate flexibility and compassion with respect to public health crises in the developing world."

We are pleased to respond that we have worked hard this past month to address your challenge, and believe that it is possible to strike such a balance. In fact, we have been able to identify a common approach that we think would do so.

The problem of health care in the developing world – especially in the poorest countries – is a complex one. People in these countries lack access to health care for a variety of reasons, including lack of financial resources, lack of health infrastructure, and political instability. Solving this problem will require the efforts of a broad range of parties, including governments, multilateral organizations, private industry, and non-governmental organizations, each with important roles to play.

We believe that these efforts are most likely to succeed if the parties involved share a common vision. An important component of health care is of course access to medicines; another important component is encouragement of research. We have agreed upon the following as a practical vision for addressing the access to medicines issue in developing countries, while preserving incentives for innovation.

- (1) Developed-world nations would commit themselves to develop detailed mechanisms to ensure that their government pharmaceutical purchasing authorities pay an adequate price to encourage research and also that, as donors, they pay a price adequate to cover an appropriate share of research costs for their purchases of new products of primary value to developing nations.
- (2) Under WTO rules, least developed countries (the world's poorest countries, primarily in Sub-Saharan Africa) are not obligated to provide IP protection to medicines, at least through 2016. We agree with this rule. That said, we need—

to keep in mind that the goal is to promote access to medicines, and that there are a range of policies that countries need to put in place to achieve that goal effectively. We also recognize that as these countries develop and become more viable locations for investment and R&D, they should consider time-limiting such a suspension of IP. We believe it appropriate that the global and national funds purchasing for these countries pay competitive prices but also believe that these prices should cover an appropriate share of research costs for new products whose primary value is in developing nations.

(3) Middle-income nations would protect IP, but markets would be divided: the poorer sections would get the benefit of low prices, and the wealthier sectors would pay a price more aligned with the developed-world price. Some countries would need to de-regulate their pricing regimes to allow this to happen.

(4) All nations would prohibit trade in counterfeit and fake drugs, would cooperate with generic and research pharmaceutical firms to help suppress it, and would assist in preventing the reverse flow of low-income-nation generic drugs to high-income nations.

(5) All beneficiaries of the low-margin pricing would remove all legal tax, duty, and similar barriers to the import and marketing of pharmaceuticals. They would further agree to accept new drugs on the approval of those drugs by an appropriate international process.

(6) Donor nations would commit themselves to support the global funds (whether multilateral or national) at a defined level.

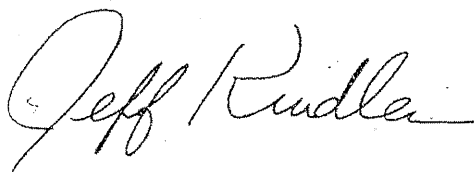
We identified two steps that we believe might contribute to achieving such a vision. One is to initiate a dialog among the various participants in the middle income markets to explore ways in which poorer patients in those markets might best be served. Such a discussion could include issues such as how to prevent arbitrage between market segments that would undermine access for the poorest, as well as ways to reduce counterfeits and to eliminate distortions that arise when the prescribing and dispensing functions are not separated. We are committed to beginning such a dialogue with other interested parties, and will explore the means to do so.

Second, we believe that the United States should consider as a trade goal the achievement of a sector-specific trade agreement among developed countries (e.g., under the aegis of the WTO, or perhaps the OECD) to ensure that pricing and reimbursement policies recognize and reward innovation, and to set disciplines on government practices that undermine incentives for innovation. This is necessary to ensure that short-term cost containment objectives do not overwhelm the longer term benefits from the effective promotion of R&D. We recognize that this could be a difficult and longer-term goal to achieve. It might, for example, best be achieved in the form of a global sector-specific approach that would include a number of the components of the vision outlined above.

We would be happy to attempt to propose language defining this goal for a new trade-promotion authority bill should you wish.

We are honored to have had this opportunity to explore these issues together and believe that we have started a fruitful dialogue. Thank you for the opportunity.

Sincerely,

A handwritten signature in cursive script, reading "Jeff Kindler".

Jeff Kindler
Chairman and CEO
Pfizer, Inc.

A handwritten signature in cursive script, reading "John Barton".

John Barton
George E. Osborne Professor of Law Emeritus
Stanford University

Good News: Led by a National Legislative Working Group on Trade & Prescription Drugs, states won a small victory in the text of the most recent bilateral trade deal. The U.S. – Korea Free Trade Agreement chapter that deals with pharmaceuticals includes a footnote that explicitly carves out Medicaid from the disciplines of the agreement.

Advocacy Pays Off: This ‘carve-out’ was the result of several letters to, and face-to-face conversations with, U.S. trade negotiators. The co-chairs of the Working Group also wrote to Congress, asking members to “seek assurances...that USTR will not include limitations on cost-cutting drug formularies in any final [trade] agreement.”

What’s the Issue: An earlier free trade agreement—with Australia—appeared to bring state administration of Medicaid programs within the scope of the agreement. That was bad news for states, because it could complicate the ability of states to use their bulk-purchasing power to negotiate lower drug prices for Medicaid recipients.

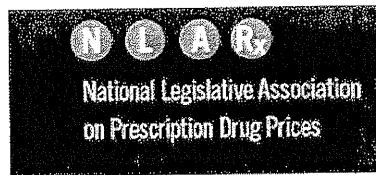
The Office of the United States Trade Representative, has attacked the use of ‘reference pricing’—whereby medicines that do lead to improvements in patient health can be priced higher, but drugs that deliver no added health benefits cannot. More than 40 states use ‘reference pricing’ and a preferred drug list for managing the drug costs. The use of “PDLs” have been very effective in combating price hikes for prescription drugs.

What Happens Next: The US-Korea Free Trade Agreement hasn’t been passed by Congress, so the provisions in that agreement are not yet ‘in effect.’ Nor has there been an agreement by USTR to use this ‘carve-out’ in all future trade negotiations. While ‘access to medicines’ was noted as part of the overall ‘Bipartisan Trade Deal’ announced this spring, that applied to developing countries, rather than to U.S. states!

Over the last year, the pharmaceutical industry has been pushing on the issue of ‘reference pricing’ in other countries. Many countries use the same tools as do U.S. states in managing costs. The industry continues to fight state drug pricing programs, both in domestic courts and in the text of trade agreements.

Working Group members, members of the National Legislative Association on Prescription Drug Prices (NLARx), state legislatures, state Medicaid directors and others can use their influence with Congress to ensure that this ‘carve-out’ of state Medicaid programs becomes part of USTR’s standard negotiating model.

- Call on USTR to affirm its commitment to a ‘carve-out’ for Medicaid in all trade negotiations, possibly using language from the Korea agreement as precedent.
- Congress could instruct US trade negotiators *not* to interfere with the drug pricing programs used by other countries, if those programs are compatible with WTO rules. This would help ensure that other countries—and U.S. states—can continue to use ‘reference pricing’ as part of their toolkit for reducing drug prices.



Brief Overview of Industry/Government Efforts to Undermine Evidence-Based Pricing and Reimbursement Policies

National Legislative Association on Prescription Drug Prices
February 19, 2009

State governments negotiate drug prices by comparing new drugs to existing therapies

State Medicaid programs are able to provide pharmaceutical coverage for 58 million Americans because they negotiate discounted prices from drug manufacturers. At least 40 states negotiate prices based on an open formulary, or a preferred drug list (PDL). They compare evidence on the safety, efficacy, and cost-effectiveness of new drugs to existing ones in the same therapeutic class, and favor the best ones – not unlike private insurance companies or foreign governments.

The branded drug industry sued states to undermine the system of open formularies

In the early 2000s, the industry launched three separate lawsuits against state programs in Maine, Michigan and Florida, claiming federal Medicaid laws prevented their use of PDLs in their programs. However, the plaintiffs lost all three cases, with federal courts, including the US Supreme Court, upholding states' rights to negotiate prices evidence-based PDLs.

Australia-US Free Trade Agreement sets guidelines for government pricing policies

This bilateral trade agreement was the first to include a section directly addressing the pricing of pharmaceuticals. It introduced a series of rules concerning the procedures involved in administering the systems of reference pricing, including greater industry participation, an appeals process, and a commitment by both countries to observe a premium on "innovative" new products.

Korea-US Free Trade Agreement includes guidelines more favorable to branded industry

Chapter five of the Korea-US Free Trade Agreement was based on the pharmaceutical provisions in the Australia agreement, but it set pricing guidelines even more favorable to the drug industry. The agreement requires each country to "appropriately recognize the value of patented pharmaceutical products and medical devices in the amount of reimbursement it provides." State governments successfully lobbied for a provision in the agreement to exclude Medicaid, but states are concerned that future trade agreements will contain similar provisions, threatening Medicaid PDLs.

US trade officials attack evidence-based reference pricing in other fora

The U.S. Trade Representative (USTR) and the Departments of Health and Human Services, Commerce, and State are currently pressuring other developed countries, including some of our closest OECD allies, to limit programs they have in place to curb irrational pricing of medicines. USTR's National Trade Estimate Report on Foreign Trade Barriers describes their negotiating objectives in more detail, and these are similar to industry requests. These include: ending reference pricing based on comparisons of generic and patented medicines; granting pharmaceutical companies greater access to the decision makers who evaluate medicines; and creating an appeals process for decisions unfavorable to industry.

